

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	No. CV-F-05-285 REC/DLB
	)	
	)	ORDER FINDING RESPONDENT TO
Petitioner,	)	BE IN CIVIL CONTEMPT OF
	)	COURT, DIRECTING ISSUANCE OF
vs.	)	BENCH WARRANT FOR
	)	RESPONDENT'S ARREST BY THE
	)	UNITED STATES MARSHAL
LORNE McCAN,	)	SERVICE, DIRECTING UNITED
	)	STATES MARSHAL TO BRING
	)	RESPONDENT BEFORE THE COURT,
Respondent.	)	ORDERING RESPONDENT CONFINED
	)	IN THE FRESNO COUNTY JAIL,
	)	AND ORDERING RESPONDENT TO
	)	PAY COMPENSATORY FINE TO THE
	)	UNITED STATES

Respondent Lorne McCan was ordered to appear on August 22, 2005 at 1:30 p.m. and show cause why he should not be found in civil contempt of court.

No appearance by or on behalf of respondent was made. Upon due consideration of the record in this action and for the reasons set forth herein, the court finds respondent Lorne McCan

1 to be in civil contempt of court and issues the sanctions set  
2 forth herein.

3 **1. Background.**

4 The United States Magistrate Judge filed on May 10, 2005 a  
5 recommendation that the IRS summons issued against the respondent  
6 be enforced and that respondent be ordered to appear at a hearing  
7 for the purpose of complying with the summons, during which  
8 hearing the validity of any claim of the privilege against self-  
9 incrimination to questions posed to the respondent or to  
10 documents subject to summons also may be determined.

11 On May 19, 2005, respondent filed a "Notice of Appeal of  
12 Magistrates Findigs [sic] and Recmmendations [sic] Re: Tax  
13 Summons Enforcement, and Order re: Privilege Logs."

14 By Order filed on May 24, 2005 (hereinafter referred to as  
15 the May 24 Order or the Summons Enforcement Order), the court  
16 deemed respondent's notices of appeal filed on May 19, 2005 to be  
17 objections to the Magistrate Judge's recommendation pursuant to  
18 Rule 72-303(b), Local Rules of Practice. The May 24 Order  
19 enforced the IRS summons and ordered respondent to appear on June  
20 17, 2005 at 8:00 a.m. in Courtroom 5

21 there to be sworn, to give testimony, and to  
22 produce for examining and copying the books,  
23 checks, records, papers and other data  
24 demanded by the summons. The examination  
25 shall continue in the same place on July 11,  
26 2005, at a time to be set in writing by  
Revenue Agent Chynoweth or his designee. At  
the hearing before Magistrate Judge Beck, any  
issues regarding the Fifth Amendment  
privilege against self-incrimination will be  
ruled on by Magistrate Judge Beck and the

1 hearing will proceed.

2 Respondent then filed a pleading captioned "Notice of  
3 Acceptance as True, Returning as True and Firing in Response to  
4 United States District Judge's Order Dated May 23, 2005 and In  
5 Support of Appeal of United States District Judge's Order Dated  
6 May 23, 2005" wherein it is stated in pertinent part:

7 By special appearance, only and not intended  
8 to constitute an express nor implied waiver  
9 of any and all Rights, privileges or  
10 otherwise that may exist.

11 Secure party also referred to as general  
12 trustee for [named respondent], notifies the  
13 court for purposes of closure and settlement  
14 of the account that the 'Order Deeming  
15 Respondent's 'Notice of Appeal of Magistrates  
16 Findings [sic] and Recommendations [sic]' To  
17 Be Objections to Findings and Recommendation;  
18 Enforcing IRS Summons and Directing  
19 Respondent to Appear on Friday, June 17, 2005  
20 at [specified time] in Courtroom 5' has been  
21 accepted as true and returned as true and the  
22 author has been fired, District Robert E.  
23 Coyle.

24 This pleading is signed by respondent as "Secured party third  
25 party intervener for Lorne McCan". Attached to this pleading is  
26 a copy of the May 24 Order, which copy is stamped:<sup>1</sup>

I received your offer of attached May 23,  
2005. I am accepting your offer as true and  
I am returning Your offer as true for closure  
and discharge of this Matter. I am competent  
to handle my own affairs. I am declaring you  
incompetent.

You are fired.

---

<sup>1</sup>Respondent filed a similar pleading with respect to the  
Magistrate Judge's findings and recommendation that the IRS summons  
be enforced.

1 Respondent also filed a pleading captioned:

2 Notice of Acceptance for Value and Returning  
3 for Value the Order of United States District  
4 Judge Robert E. Coyle Dated May 23, 2005  
5 Pursuant To, But Not Limited To, HJR 192 And  
6 In Support of Notice of Appeal of United  
7 States District Judge's Order Dated May 23,  
8 2005.

9 In these pleading, respondent, again acting as "general trustee"  
10 asserts that the court's May 24, 2005 Order "has been accepted  
11 for value and returned for value pursuant to but not limited to  
12 HJR 192."

13 Thereafter, on June 13, 2005, respondent filed a pleading  
14 captioned:

15 Notice of Appeal of the District Court's  
16 Order Dated May 23, 2005. This Appeal is  
17 Made to the Ninth Circuit Court of Appeals

18 The Notice of Appeal to the Ninth Circuit states that the issues  
19 for appeal are:

20 1) Whether the District Court had  
21 jurisdiction to issue the Order dated May 23,  
22 2005, the entire record considered.

23 2) Whether the enforcement of the summons is  
24 a violation of the Respondent/Appellants 5<sup>th</sup>  
25 amendment privilege.

26 3) Whether the court can force the Authorized  
Agent to testify on behalf of the respondent,  
since the respondent is an artificial entity.

Respondent did not move this court for a stay of the Summons  
Enforcement Order prior to filing the Notice of Appeal to the  
Ninth Circuit. Respondent did not file a motion for a stay of  
the Summons Enforcement Order until August 31, 2005.

On June 29, 2005, the United States filed a petition to find

1 respondent in civil contempt for his failure to comply with the  
2 May 24 Order. Attached to this petition is a copy of a letter  
3 dated June 14, 2005 addressed to respondent from Assistant United  
4 States Attorney Himel, wherein it is stated in pertinent part:

5 As you know, Judge Coyle ordered you all to  
6 appear, produce documents and testify in  
7 Judge Beck's courtroom in the United States  
8 Courthouse in Fresno on June 17, 2005. The  
9 notices of appeal filed in your names have no  
10 effect on your obligations to comply with  
11 Judge Coyle's order in Fresno this Friday.

12 If you fail to comply, I can ask the United  
13 States District Court to hold you in  
14 contempt, have you arrested and brought to  
15 Fresno, and not release you from custody  
16 until you comply.

17 By copy hereof, I ask that Mr. Kaia inform  
18 Ms. Liascos and Messrs. McCan and Innis of  
19 this warning. Thank you for your attention  
20 in this matter.

21 Also attached to the petition is the declaration of Revenue Agent  
22 Fred Chynoweth, who avers in pertinent part:

23 4. At the scheduled times on June 17, 2005,  
24 respondents failed to appear. Although I  
25 called for [sic] respondents Innis and Booth  
26 that day to ask whether they intended to  
appear, they did not return my calls. They  
neither appeared before me nor contacted me  
at any time between the Orders and this  
writing [executed on June 24, 2005], and in  
particular they never said they were not  
coming June 17.

5. The [Internal Revenue] Service keeps  
records of employee time spent, by date and  
case. As these records reflect, I spent 6  
hours on these four cases on June 16, 2005,  
and 10 hours on June 17, 2005, for a total  
for those two days of 16 hours. My gross pay  
is \$38.09 per hour; adding my employer-paid  
benefits, my agency's total hourly personnel  
cost for me is \$48.45. 16 hours times \$48.45

1 per hour is \$775.20 in personnel costs on  
2 these cases for those days. A copy of my  
3 travel voucher for travel to Fresno for these  
4 cases on June 16-17, 2005 is attached ...; it  
5 shows a total of \$123.94 in travel expenses  
for the trip to Fresno to receive records and  
testimony from these respondents. The sum of  
\$775.20 in salary and benefits plus \$123.94  
in travel expenses is \$899.14.

6 6. Respondents failure to comply with the  
7 Order [sic] continues to the present.

8 7. The testimony and the books, records,  
9 papers and other data demanded by the  
summonses still are not in the possession of  
the Internal Revenue Service.

10 8. The testimony and the books, records,  
11 papers and other data demanded by the  
12 summonses still are needed to determine the  
13 correct tax liabilities of Mr. and Mrs.  
14 Booth, Aligned Enterprises Trust and Alpha  
Omega Trust for 1998 through 2002; and of San  
Joaquin Wellness and Medical Group and  
Bakersfield Properties and Trust Co. For 2001  
and 2002.

15 Also attached to the petition is the declaration of Assistant  
16 United States Attorney Himel, who avers in pertinent part:

17 2. This Court, by Orders filed May 23-25,  
18 2005, directed respondents to appear in Judge  
19 Beck's courtroom on June 17, 2005 ... The  
20 reason the appearances were to be at Judge  
21 Beck's courtroom was to have Judge Beck  
22 available to decide any questions of  
23 respondents' claims of the privilege against  
24 self-incrimination. To give Judge Beck the  
25 exact questions as to which the privilege was  
26 claimed, the United States office retained a  
court reporter to appear for all four  
sessions.

...

4. At the scheduled times on June 17, 2005,  
respondents failed to appear. After the  
times for appearance by Mr. McCan and Ms.  
Liascos passed without their appearing,

1 around 9:30 a.m., I called for [sic]  
2 respondents Innis and Booth at their  
3 workplace to ask whether they intended to  
4 appear. They were said to be present but  
5 busy. They did not return my calls. They  
6 did not call me any time between the Orders  
7 and this writing [executed on June 29, 2005],  
8 and in particular they never said whether  
9 they were coming June 17.

10 5. I keep records of my time spent on the  
11 job. As these records reflect, I spent 7.25  
12 hours on these four cases on June 16, 2005.  
13 That time was spent preparing for the  
14 respondents' appearances in Fresno, preparing  
15 the case files for the trip, taking Amtrak  
16 from Sacramento to Fresno, and meeting with  
17 the IRS Revenue Agent.

18 6. I spent 7 hours on June 17, 2005. That  
19 time was spent going from the hotel to the  
20 federal courthouse, meeting with the IRS  
21 Revenue Agent, telephoning the organization  
22 where respondents Steven Booth and John Innis  
23 work, awaiting respondents at Judge Beck's  
24 courtroom, going from the federal courthouse  
25 to the Amtrak station, waiting for the train,  
26 and taking Amtrak from Fresno to Sacramento.  
The total for these two days is 14.25 hours.

7. Under the calculation method prescribed  
by my Department, to arrive at an hourly rate  
for my work I take the sum of my gross pay of  
\$66.06 per hour, benefits at 23% of gross  
pay, or \$15.19 per hour, and Department  
overhead of \$71.49 per hour. The total rate  
is \$152.74 per hour. For tax cases, I.R.C. §  
7430(c)(1)(B)(iii) limits attorney's fees to  
a figure found in Rev.Proc. 2004-71, Section  
3.35, namely \$150 per hour. The \$150 hourly  
rate times 14.25 hours comes to \$2,137.50 as  
the cost of my time spent on the cases for  
the two days.

8. Additionally, a printout of my travel  
voucher for travel to Fresno for these cases  
on June 16-17, 2005 ... shows a total of  
\$197.50 in travel expenses.

9. Additionally, a copy of the court  
reporter's bill for \$200.00 in appearance

1 fees is attached ...

2 10. The sum of the \$2,137.50 for my time  
3 plus the \$197.50 for my travel plus the  
4 \$200.00 for the court reporter plus the  
5 \$899.14 in the Declaration of Revenue Agent  
6 Fred Chynoweth Re: Civil Content ... is  
7 \$3,434.14.

8 On July 15, 2005, the court issued to respondent an Order to  
9 Show Cause re Contempt. The Order to Show Cause orders  
10 respondent to appear in Courtroom 1 on August 22, 2005 at 1:30  
11 p.m. and show cause:

12 1. Why the respondents, JEAN ANNETTE  
13 LIASCOS, LORNE McCAN, V. STEVEN BOOTH, LOUISE  
14 Q. BOOTH, and JOHN INNIS, JR., should not be  
15 held in civil contempt of this Court for  
16 their failure to comply with the 'Orders  
17 Deeming Respondent's "Notice of Appeal of  
18 Magistrate's Findigs [sic] and Recmmendations  
19 [sic]" to Be Objections to Findings and  
20 Recommendation; Enforcing IRS Summons and  
21 Directing Respondent to Appear on Friday,  
22 June 17, 2005 at [times certain] in Courtroom  
23 5' ('Summons Enforcement Orders').

24 2. Why the respondents should not be  
25 incarcerated and order to pay a daily fine  
26 until they comply with the Summons  
Enforcement Orders, and ordered to pay a  
compensatory fine to the United States.

IT IS FURTHER ORDERED that on or before  
Monday, August 8, 2005 the respondents shall  
file and serve a written response to the  
'Petition Re: Civil Contempt of Orders filed  
May 23-25, 2005.' Only those issues brought  
into controversy by the responsive papers and  
supported by declaration will be considered  
at the hearing on this Order, and any  
uncontested allegation in the Petition Re:  
Civil Contempt will be considered admitted.

Respondents are hereby notified that a  
failure to comply with this Order will  
subject respondents to possible further  
sanctions for contempt of Court.



1 Since the July 15, 2005 Order was served on respondent,  
2 respondent has filed a pleading captioned "Notice of Returning  
3 for Cause, Without Dishonor the Court's Order Dated July 15, 2005  
4 Re: Contempt" and/or have returned the served copy of the July  
5 15, 2005 Order marked "returned for cause without dishonor." In  
6 addition, respondent filed a pleading captioned:

7 Notice of: Notice of Appeal Filed in Response  
8 to the Court's Order Dated May 23-25, 2005.

9 Notice That This Court Lacks Jurisdiction To  
10 Enforce Its Order Subsequent to Appeal in the  
11 Ninth Circuit Court.

12 Notice That No Agreement Exists Between  
13 Respondent & The Court Authorizing a Civil  
14 Contempt & Respondent Does Not Agree To The  
15 Terms of the Proposed Agreement Dated July  
16 15, 2005 Called An Order.

17 In this pleading, respondent, signing as the "authorized agent",  
18 asserts in pertinent part:

19 By special appearance, only and not intended  
20 to constitute an neither [sic] express nor  
21 implied waiver of any and all Rights,  
22 privileges or otherwise that may exist.

23 Authorized agent for [name of specific  
24 respondent], notifies the court for purposes  
25 of closure and settlement of the account that  
26 Notice Of: Notice of Appeal Filed in Response  
To The Court's Order Dated May 23-25, 2005.

Notice That This Court Lacks Jurisdiction To  
Enforce Its Order Subsequent to Appeal In The  
Ninth Circuit Court.

Notice That No Agreement Exists Between  
Respondent & The Court Authorizing A Civil  
Contempt & Respondent Does Not Agree To The  
Terms Of The Proposed Agreement Dated July  
15, 2005 Called An Order has been filed for a  
special appearance, which is scheduled for  
August 22, 2005, in dept 1 of the Federal

1 Court house [sic], in Fresno, California ....

2 No other responses to the July 15, 2005 Order to Show Cause  
3 have been filed by respondent. As noted, respondent did not  
4 appear on August 22, 2005.

5 **2. Merits of Order to Show Cause Re: Contempt.**

6 **a. Jurisdiction.**

7 Respondent contends that this court lacks jurisdiction to  
8 enforce the Summons Enforcement Order by contempt because  
9 respondent filed an appeal to the Ninth Circuit.

10 Respondent's position is without merit. Absent a stay  
11 pending appeal, district courts have the authority to enforce  
12 their orders including holding parties in contempt while an  
13 appeal of the underlying enforcement order is pending. See  
14 Maness v. Meyers, 419 U.S. 449, 458-460 (1975); Richmark Corp. V.  
15 Timber Falling Consultants, 959 F.2d 1468, 1480 (9<sup>th</sup> Cir. 1992);  
16 In Re Crystal Palace Gambling Hall, Inc., 817 F.2d 1361, 1364  
17 (9<sup>th</sup> Cir. 1987); 26 U.S.C. 7604(b). Here, because respondent did  
18 not apply for and obtain a stay of the Summons Enforcement Order  
19 pending the appeal, his failure to comply with the Summons  
20 Enforcement Order may be sanctioned by contempt.

21 **b. Necessary Showing to Avoid Contempt.**

22 If a person disobeys a specific and definite court order, he  
23 may properly be adjudged in contempt. Shuffler v. Heritage Bank,  
24 720 F.3d 1141, 1146 (9<sup>th</sup> Cir. 1983). As explained in In re  
25 Crystal Palace Gambling Hall, Inc., supra, 817 F.2d at 1365:

26 'A person fails to act as ordered by the

1 court when he fails to take "all the  
2 reasonable steps within [his] power to insure  
3 compliance with the [court's] order []." ...  
4 It does not matter what the intent of the  
5 appellants was when they disobeyed the  
6 court's order ... Moreover, the contempt need  
7 not be willful ... Even though "[t]he sole  
8 question is whether a party complied with the  
9 district court's order," a party can escape  
10 contempt by demonstrating that he is unable  
11 to comply ... Although both Crystal Palace  
12 and the shareholders appealed, no stay was  
13 obtained. A party cannot disobey a court  
14 order and later argue that there were  
15 'exceptional circumstances' for doing so.  
16 This proposed 'good faith' exception to the  
17 requirement of obedience to a court order has  
18 no basis in law, and we reject the invitation  
19 to create such an exception.

20 The party alleging civil contempt must demonstrate by clear and  
21 convincing evidence that the parties to be held in contempt  
22 violated the court's orders. See Federal Trade Comm'n v.  
23 Affordable Media, LLC, 179 F.3d 1228, 1239 (9<sup>th</sup> Cir. 1999). The  
24 burden then shifts to the alleged contemnors to demonstrate why  
25 they were unable to comply. A party's inability to comply with a  
26 court's order constitutes a defense to a charge of civil  
contempt. Id. The purpose of civil contempt is not to punish  
but "to coerce the defendant into compliance with the court's  
order, and to compensate the complainant for losses sustained."  
Whittaker Corp. V. Execuair Corp., 953 F.2d 510, 517 (9<sup>th</sup> Cir.  
1992). While the court must use the "least possible power  
adequate to the end proposed," Spallone v. United States, 493  
U.S. 265, 276 (1990), it also "must consider the character and  
magnitude of the harm threatened by continued contumacy, and the  
probable effectiveness of any suggested sanction in bringing

1 about the result desired." Whittaker, id., 953 F.2d at 516.  
2 However, footdragging is an important factor in weighing the use  
3 of a contempt sanction. See Local 28 of the Sheet Metal Workers'  
4 Int'l Ass'n v. EEOC, 478 U.S. 421 476-477 (1986).

5 Here, the record establishes that the United States has  
6 demonstrated by clear and convincing evidence that respondent  
7 violated the Summons Enforcement Order. Respondent did not  
8 appear on June 17, 2005. As the court's docket in this case  
9 demonstrates, respondent received a copy of the Summons  
10 Enforcement Order because respondent filed a pleading stating  
11 that the Order "has been accepted as true and returned as true  
12 and the author has been fired, Judge Robert E. Coyle" and that  
13 the respective respondent is "accepting your offer as true",  
14 "returning Your offer as true for closure and discharge of this  
15 Matter", that each respondent is competent, that Judge Coyle is  
16 declared incompetent and that Judge Coyle is "fired". As the  
17 docket in this case demonstrates, respondent received a copy of  
18 the Order to Show Cause re: Contempt because respondent filed a  
19 pleading returning the Order to Show Cause re: Contempt "for  
20 cause without dishonor", and a pleading stating that this court  
21 lacks jurisdiction to hold respondents in contempt because of the  
22 appeals, and that no agreement exists between the respondents and  
23 the court authorizing civil contempt. However, as ruled above,  
24 because respondent did not seek and obtain a stay of the Summons  
25 Enforcement Order pending the appeal, the fact of the appeal is  
26 no defense to contempt for failure to comply with the Summons

1 Enforcement Order. Furthermore, respondent's contentions that  
2 there must be an agreement between respondent and the court  
3 before respondent can be found in contempt for his failure to  
4 comply with the Summons Enforcement Order is frivolous. This  
5 court has statutory and inherent authority to compel compliance  
6 with its orders issued to parties appearing before it. Finally,  
7 the only defense to the failure to comply with the Summons  
8 Enforcement Order is that respondent was unable to comply. No  
9 such showing has been made to this court.

10 Therefore, the United States has carried its burden of  
11 establishing by clear and convincing evidence that respondent  
12 Lorne McCan is in civil contempt of this court by her failure to  
13 comply with the Summons Enforcement Order.

14 **c. Appropriate Sanction.**

15 The United States petitions the court to order coercive  
16 confinement of respondent until respondent has complied with the  
17 Summons Enforcement Order and to impose a compensatory fine of  
18 \$686.00.<sup>2</sup>

19 **I. Coercive Confinement.**

20 18 U.S.C. § 1826 provides in pertinent part:

21 (a) Whenever a witness in any proceeding  
22 before or ancillary to any court ... refuses  
23 without just cause to comply with an order of  
the court to testify or provide other  
information, including any book, paper,

---

24 <sup>2</sup>The amount sought to be imposed on respondent as a  
25 compensatory fine represents respondent's one-fifth share of the  
26 total expenses incurred by the United States and described in  
detail supra.

1 document, record, recording or other  
2 material, the court, upon such refusal, or  
3 when such refusal is duly brought to its  
4 attention, may summarily order his  
5 confinement at a suitable place until such  
6 time as the witness is willing to give such  
7 testimony or provide such information. No  
8 period of such confinement shall exceed the  
9 life of -

10 (1) the court proceeding ....

11 ...

12 before which such refusal to comply with the  
13 court order occurred, but in no event shall  
14 such confinement exceed eighteen months.

15 (b) No person confined pursuant to subsection  
16 (a) of this section shall be admitted to bail  
17 pending the determination of an appeal taken  
18 by him from the order for his confinement if  
19 it appears that the appeal is frivolous or  
20 taken for delay. ....

21 The court concludes from the record before it that coercive  
22 confinement pursuant to Section 1826 is an appropriate sanction  
23 to impose upon respondent for his failure to comply with the  
24 Summons Enforcement Order. The record demonstrates that  
25 respondent refuses to comply with orders of this court, including  
26 refusing to appear at the Order to Show Cause hearing.  
Respondent's refusals to comply with court orders are couched in  
terms establishing respondent's disregard for the authority of  
this court and evidences that his refusal to comply with the  
Summons Enforcement Order is a deliberate decision on  
respondent's part. The court is persuaded that the harsh  
sanction of confinement is the only vehicle most likely to coerce  
respondent into complying with the Summons Enforcement Order.

1                                    **ii. Fines.**

2            As noted, the United States also seeks a compensatory fine  
3 in the amount of \$686.00.

4            Sanctions for civil contempt may be imposed to coerce  
5 obedience to a court order, or to compensate the party pursuing  
6 the contempt action for injuries resulting from the contemptuous  
7 behavior or both. United States v. United Mine Workers, 300 U.S.  
8 258, 303-304 (1947). Compensatory awards are limited "to actual  
9 losses sustained as a result of the contumacy." Shuffler v.  
10 Heritage Bank, supra, 720 F.2d at 1148.

11           The court concludes from its review of the declarations  
12 filed by the United States and the exhibits attached thereto that  
13 the amount requested by the United States represents the losses  
14 sustained by the United States as a result of respondent's  
15 contumacy. The court further concludes that the sanction imposed  
16 on respondent for his civil contempt in failing to comply with  
17 the Summons Enforcement Order will also include a monetary award  
18 to compensate the United States for respondent's one-fifth share  
19 of the losses sustained by AUSA Himel, Special Agent Chynoweth,  
20 and the United States in preparing to attend and attending the  
21 summons enforcement proceeding scheduled for respondent on June  
22 17, 2005.

23           ACCORDINGLY:

24           1. Respondent Lorne McCan is found to be in civil contempt  
25 of this court by his failure to comply with the Summons  
26 Enforcement Order.

2. Respondent Lorne McCan shall stand committed to and shall be confined in the Fresno County Jail until he purges himself of contempt by complying with the Summons Enforcement Order, the termination of the action, or eighteen months, whichever is earlier, unless sooner discharged from such confinement by due process of law.

3. A warrant of arrest shall now issue in due form for the arrest of respondent Lorne McCan, directed to the United States marshal for the United States District Court for the Eastern District of California, Fresno Division, and that, when arrested by the marshal, respondent Lorne McCan, be brought before the Court for a further hearing to determine whether respondent Lorne McCan has complied with the Summons Enforcement Order.

4. Respondent Lorne McCan shall be entitled to the services of appointed counsel at any further proceedings in connection with this civil contempt proceeding if he establishes that he is indigent and, therefore, entitled to appointed counsel.

5. Respondent Lorne McCan shall pay a compensatory fine in the amount of \$686.00 to the United States of America, to be paid to the United States Attorney for the Eastern District of California.

IT IS SO ORDERED.

**Dated:** September 6, 2005  
668554

/s/ Robert E. Coyle  
UNITED STATES DISTRICT JUDGE